

HOUSE BILL 136

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2004 Regular Session
(41r0326)

ENROLLED BILL

-- *Environmental Matters/Education, Health, and Environmental Affairs* --

Introduced by **Delegates Hubbard, Frush, Bobo, Bronrott, Montgomery, V. Clagett, and Franchot**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Environment - Products That Contain Mercury - Labeling and ~~Disposal~~**
3 **Reclamation or Destination**

4 FOR the purpose of prohibiting manufacturers and retailers from selling, on or after
5 a certain date, certain products that contain mercury unless a certain label is
6 affixed to the product; exempting certain products that contain mercury from
7 the labeling and ~~disposal~~ reclamation or destination requirements; ~~providing~~
8 requiring that certain information be included on ~~the~~ a certain label; ~~providing~~
9 that a certain label that conforms to another state's label requirements for
10 certain products satisfies certain label requirements of this Act; providing that a
11 manufacturer of certain products is responsible for affixing a certain label;
12 providing that a manufacturer that labels certain products in compliance with
13 another state's labeling requirements for certain products satisfies certain
14 labeling requirements of this Act; providing that a vehicle manufacturer may
15 comply with the labeling requirements of this Act by placing a certain label in a
16 certain place; ~~prohibiting a person from disposing of certain products that~~

1 ~~contain mercury, on or after a certain date, unless certain conditions have been~~
 2 ~~met; requiring operators of refuse disposal systems to provide notice of certain~~
 3 ~~disposal prohibitions to certain persons~~ requiring, on or after a certain date, a
 4 person who discards a certain number or more of certain mercury-added
 5 fluorescent lamps a year to arrange for the final ~~disposition~~ reclamation or
 6 *destination* of the lamps at certain facilities; authorizing the Department to
 7 delay the imposition of certain requirements under certain circumstances;
 8 authorizing an owner or operator of a commercial or industrial property to
 9 assign the responsibility for compliance with certain final disposition
 10 requirements to certain tenants under certain circumstances; providing certain
 11 owners and operators with certain liability protection under certain
 12 circumstances; requiring the Department of the Environment to adopt certain
 13 regulations by a certain date; requiring the Department to consult with certain
 14 stakeholders before adopting certain regulations; defining certain terms;
 15 *providing for the application of this Act; making the provisions of this Act*
 16 *severable*; and generally relating to the labeling and ~~disposal~~ reclamation or
 17 *destination* of products that contain mercury.

18 BY repealing and reenacting, with amendments,
 19 Article - Environment
 20 Section 6-905
 21 Annotated Code of Maryland
 22 (1996 Replacement Volume and 2003 Supplement)

23 BY adding to
 24 Article - Environment
 25 Section 6-905.1 and 6-905.2
 26 Annotated Code of Maryland
 27 (1996 Replacement Volume and 2003 Supplement)

28 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 29 MARYLAND, That the Laws of Maryland read as follows:

30 **Article - Environment**

31 6-905.

32 (a) In this [section, "marketer"] PART THE FOLLOWING WORDS HAVE THE
 33 MEANINGS INDICATED.

34 (B) "MANUFACTURER" MEANS A PERSON THAT:

35 (1) PRODUCES A PRODUCT;

36 (2) FOR A MULTICOMPONENT PRODUCT, PRODUCES OR ASSEMBLES THE
 37 FINAL PRODUCT; OR

1 (3) SERVES AS AN IMPORTER OR DOMESTIC DISTRIBUTOR OF A
2 PRODUCT PRODUCED OUTSIDE OF THE UNITED STATES.

3 ~~(B)~~ (C) "MARKETER" means a person who manufactures, assembles, sells,
4 distributes, affixes a brand name or private label to, or licenses the use of a brand
5 name on a fever thermometer containing mercury.

6 [(b) Beginning October 1, 2002, a marketer may not sell or provide a fever
7 thermometer containing mercury to a consumer except by prescription.

8 (c) This section does not apply to:

9 (1) Fever thermometers sold or provided to be used in hospitals or other
10 places where medical services are provided by medical service professionals; or

11 (2) Digital thermometers using mercury-added button cell batteries.]

12 ~~(C)~~ (D) "MERCUY-ADDED PRODUCT" MEANS ANY OF THE FOLLOWING
13 PRODUCTS IF CONTAINING ELEMENTAL MERCURY OR A MERCURY COMPOUND THAT
14 HAS BEEN ADDED TO THE PRODUCT FOR ANY REASON:

15 (1) DYES OR PIGMENTS;

16 (2) ELECTRIC SWITCHES;

17 (3) FLUORESCENT LAMPS; AND

18 (4) THERMOSTATS.

19 (E) "MOTOR VEHICLE" HAS THE MEANING STATED IN § 11-135 OF THE
20 TRANSPORTATION ARTICLE.

21 (F) "RECLAMATION FACILITY" MEANS A SITE:

22 (1) WHERE EQUIPMENT IS USED TO RECAPTURE MERCURY FROM
23 MERCURY-ADDED FLUORESCENT LAMPS FOR THE PURPOSE OF RECYCLING OR
24 REUSING THE MERCURY; OR

25 (2) THAT COLLECTS MERCURY CONTAINING COMPONENTS FROM
26 MERCURY-ADDED FLUORESCENT LAMPS FOR THE EVENTUAL RECAPTURE AND
27 RECYCLING OR REUSE OF THE MERCURY.

28 6-905.1.

29 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A MARKETER
30 MAY NOT SELL OR PROVIDE A FEVER THERMOMETER CONTAINING MERCURY TO A
31 CONSUMER EXCEPT BY PRESCRIPTION.

32 (B) THIS SECTION DOES NOT APPLY TO:

1 (1) A FEVER THERMOMETER SOLD OR PROVIDED TO BE USED IN
 2 HOSPITALS OR OTHER PLACES WHERE MEDICAL SERVICES ARE PROVIDED BY
 3 MEDICAL SERVICE PROFESSIONALS; OR

4 (2) A DIGITAL THERMOMETER USING MERCURY-ADDED BUTTON CELL
 5 BATTERIES.

6 6-905.2.

7 (A) THIS SECTION DOES NOT APPLY TO:

8 (1) PRESCRIPTION DRUGS;

9 (2) ANY SUBSTANCE REGULATED BY THE FEDERAL FOOD, DRUG, AND
 10 COSMETIC ACT; ~~OR~~

11 (3) BIOLOGICAL PRODUCTS REGULATED BY THE FEDERAL FOOD AND
 12 DRUG ADMINISTRATION UNDER THE FEDERAL PUBLIC HEALTH SERVICE ACT;

13 (4) MEDICAL EQUIPMENT NOT INTENDED FOR USE BY NONMEDICAL
 14 PERSONNEL; OR

15 (5) PRODUCTS THAT CONTAIN MERCURY-ADDED PRODUCTS THAT ARE
 16 LABELED IN ACCORDANCE WITH THIS SECTION.

17 (B) (1) ON OR AFTER APRIL 1, 2006, UNLESS THE PRODUCT IS LABELED IN
 18 ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION AND THE REGULATIONS
 19 ADOPTED BY THE DEPARTMENT UNDER THIS SECTION, A MANUFACTURER OR
 20 WHOLESALE MAY NOT SELL A MERCURY-ADDED PRODUCT:

21 (I) AT RETAIL IN THE STATE; OR

22 (II) TO A RETAILER IN THE STATE; ~~OR~~

23 ~~(III) FOR USE IN THE STATE.~~

24 (2) ON OR AFTER APRIL 1, 2006, UNLESS THE PRODUCT IS LABELED IN
 25 ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION AND THE REGULATIONS
 26 ADOPTED BY THE DEPARTMENT UNDER THIS SECTION, A RETAILER MAY NOT
 27 KNOWINGLY SELL A NEW MERCURY-ADDED PRODUCT IN THE STATE.

28 (C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, THE
 29 LABEL OF A MERCURY-ADDED PRODUCT MUST ~~MUST~~ SHALL CLEARLY INFORM THE
 30 PURCHASER OR CONSUMER THAT:

31 ~~(+)~~ (I) MERCURY IS PRESENT IN THE PRODUCT; AND

32 ~~(=)~~ (II) THE PRODUCT MAY NOT KNOWINGLY BE DISPOSED OF OR
 33 PLACED IN A WASTE STREAM DESTINED FOR DISPOSAL UNTIL THE MERCURY IS
 34 REMOVED AND REUSED, RECYCLED, OR OTHERWISE MANAGED TO ENSURE THAT IT
 35 DOES NOT BECOME PART OF SOLID WASTE OR WASTEWATER MUST SHALL BE

1 MANAGED IN ACCORDANCE WITH FEDERAL AND STATE DISPOSAL ENVIRONMENTAL
2 LAWS TO MINIMIZE THE RELEASE OF MERCURY INTO THE ENVIRONMENT.

3 (2) A LABEL THAT CONFORMS TO ANOTHER STATE'S LABEL
4 REQUIREMENTS FOR MERCURY-ADDED PRODUCTS SATISFIES THE REQUIREMENTS
5 OF THIS SUBSECTION.

6 (D) (1) THE MANUFACTURER OF A MERCURY-ADDED PRODUCT IS
7 RESPONSIBLE FOR AFFIXING THE LABEL REQUIRED BY THIS SECTION ON
8 MERCURY-ADDED PRODUCTS MANUFACTURED ON OR AFTER JANUARY 1, 2006.

9 (2) (I) 1. A MANUFACTURER OF A MOTOR VEHICLE MAY MEET THE
10 LABELING REQUIREMENTS OF THIS SECTION BY PLACING THE LABEL ON THE
11 VEHICLE'S DOORPOST OF A NEW VEHICLE.

12 2. IF THE SERVICING OF A VEHICLE INCLUDES THE
13 ADDITION OF A MERCURY-ADDED PRODUCT, THE LABEL ON THE DOORPOST OF THE
14 VEHICLE SHALL BE APPROPRIATELY UPDATED.

15 (II) A MANUFACTURER THAT LABELS A MERCURY-ADDED
16 PRODUCT IN COMPLIANCE WITH ANOTHER STATE'S LABELING REQUIREMENTS FOR
17 THE SAME OR A SIMILAR MERCURY-ADDED PRODUCT SATISFIES THE
18 REQUIREMENTS OF THIS SUBSECTION.

19 (E) (1) IN THIS SUBSECTION, "MERCURY-ADDED FLUORESCENT LAMP"
20 MEANS A FLUORESCENT LAMP THAT EXHIBITS THE TOXICITY CHARACTERISTIC FOR
21 MERCURY UNDER TITLE 26, SUBTITLE 13, CHAPTER 2 OF THE CODE OF MARYLAND
22 REGULATIONS.

23 (2) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, ON
24 OR AFTER OCTOBER 1, 2006, A PERSON MAY NOT KNOWINGLY DISPOSE OF A
25 MERCURY-ADDED PRODUCT IN A REFUSE DISPOSAL SYSTEM LOCATED IN THE STATE
26 UNLESS THE MERCURY HAS BEEN:

27 (1) REMOVED FROM THE PRODUCT; AND

28 (2) REUSED, RECYCLED, OR OTHERWISE MANAGED TO ENSURE THAT IT
29 DOES NOT BECOME PART OF SOLID WASTE OR WASTEWATER.

30 (F) ON OR BEFORE OCTOBER 1, 2006, THE HOLDER OF A PERMIT TO OPERATE A
31 REFUSE DISPOSAL SYSTEM SHALL POST SIGNAGE AT ALL ENTRANCES TO THE
32 REFUSE DISPOSAL SYSTEM INFORMING THE PUBLIC OF THE PROHIBITION ON
33 DISPOSING OF MERCURY-ADDED PRODUCTS CONTAINED IN SUBSECTION (E) OF THIS
34 SECTION A PERSON WHO, DURING A CALENDAR YEAR, DISCARDS 360 OR MORE AT
35 LEAST THE MINIMUM WEIGHT OR MINIMUM NUMBER OF MERCURY-ADDED
36 FLUORESCENT LAMPS, AS ESTABLISHED IN REGULATIONS ADOPTED UNDER
37 SUBSECTION (F) OF THIS SECTION, IN A CALENDAR YEAR SHALL ARRANGE FOR THE
38 FINAL DISPOSITION RECLAMATION OR DESTINATION OF THE LAMPS AT A:

39 (I) RECLAMATION FACILITY; OR

1 (II) DESTINATION FACILITY, AS DEFINED BY THE DEPARTMENT IN
2 REGULATION.

3 (3) THE DEPARTMENT MAY DELAY THE REQUIREMENTS OF PARAGRAPH
4 (2) OF THIS SUBSECTION IF IT DETERMINES THAT IT WILL NOT BE FEASIBLE FOR A
5 PERSON TO ARRANGE FOR THE FINAL ~~DISPOSITION~~ RECLAMATION OR DESTINATION
6 OF LAMPS AT RECLAMATION FACILITIES ON THE DATE PROVIDED IN PARAGRAPH (2)
7 OF THIS SUBSECTION.

8 (4) ~~(H)~~ UNLESS OTHERWISE PROVIDED UNDER FEDERAL OR STATE
9 LAW:

10 (I) AN OWNER OR OPERATOR OF AN INDUSTRIAL OR COMMERCIAL
11 PROPERTY MAY ASSIGN THE RESPONSIBILITY FOR ENSURING COMPLIANCE WITH
12 THIS SUBSECTION TO A TENANT WHO IS OTHERWISE RESPONSIBLE FOR
13 MAINTAINING THE PROPERTY; AND

14 (II) IF A TENANT IS RESPONSIBLE FOR ENSURING COMPLIANCE
15 AND FAILS TO COMPLY WITH THIS SUBSECTION, THE OWNER OR OPERATOR OF THE
16 PROPERTY IS NOT LIABLE FOR THE FAILURE TO COMPLY.

17 ~~(G)~~ (F) BY ~~OCTOBER~~ ~~JUNE~~ OCTOBER 1, 2005, THE DEPARTMENT SHALL
18 ADOPT REGULATIONS NECESSARY FOR THE IMPLEMENTATION OF THIS SECTION,
19 INCLUDING ~~THE ESTABLISHMENT OF:~~

20 (1) ~~ESTABLISHING~~ STANDARDS FOR THE SIZE, LOCATION, AND
21 TYPEFACE OF THE LABEL REQUIRED BY THIS SECTION; AND

22 (2) ~~ESTABLISHING~~ CRITERIA UNDER WHICH A PERSON SUBJECT TO
23 THIS SECTION MAY BE EXEMPTED FROM THE LABELING AND ~~DISPOSAL~~
24 RECLAMATION OR DESTINATION REQUIREMENTS AND LIMITATIONS OF THIS
25 SECTION; AND

26 (3) DURING THE COURSE OF A CALENDAR YEAR, THE MINIMUM WEIGHT
27 AND THE MINIMUM NUMBER, AS APPLICABLE, OF MERCURY-ADDED FLUORESCENT
28 LAMPS THAT SHALL BE REQUIRED FOR A PERSON TO DELIVER THE LAMPS OR
29 ARRANGE FOR THEIR DELIVERY TO A:

30 (I) RECLAMATION FACILITY; OR

31 (II) DESTINATION FACILITY, AS DEFINED BY THE DEPARTMENT IN
32 REGULATION.

33 ~~(H)~~ (G) BEFORE ADOPTING A REGULATION UNDER THIS SECTION, THE
34 DEPARTMENT SHALL CONSULT WITH PERSONS THAT HAVE AN INTEREST IN OR ARE
35 DIRECTLY IMPACTED BY THE PROPOSED REGULATION.

36 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
37 construed to apply only prospectively and § 6-905.2(e)(4) of the Environment Article,
38 as enacted under Section 1 of this Act, may not be applied or interpreted to have any

1 effect on or application to any lease or other landlord-tenant contract in effect before
2 the effective date of this Act.

3 SECTION 3. AND BE IT FURTHER ENACTED, That if any provision of this
4 Act or the application thereof to any person or circumstance is held invalid for any
5 reason in a court of competent jurisdiction, the invalidity does not affect other
6 provisions or any other application of this Act which can be given effect without the
7 invalid provision or application, and for this purpose the provisions of this Act are
8 declared severable.

9 SECTION ~~2-4.~~ AND BE IT FURTHER ENACTED, That this Act shall take
10 effect October 1, 2004.